

**VOLUNTARY CLEANUP CONTRACT
11-6033-NRP**

**IN THE MATTER OF
Tall Pines Road Property Site, Charleston County
and
RDCG Tall Pines, LLC**

This Contract is entered into by the South Carolina Department of Health and Environmental Control and RDCG Tall Pines, LLC, with respect to the Property located south of the junction of Frontage Road and Tall Pines Road, in Mount Pleasant South Carolina. The Property includes approximately 0.44 acres and is identified by Tax Map Serial Number #517-03-00-151. In entering this Contract, the Department relies on the representations contained in the "Non Responsible Party Application for Voluntary Cleanup Contract" of May 11, 2011, and any amendments thereto, by RDCG Tall Pines, LLC, which is incorporated into this Contract and attached as Appendix A.

AUTHORITY

This Contract is entered into pursuant to the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. § 44-56-710 et. seq. (as amended); the South Carolina Hazardous Waste Management Act (HWMA), S.C. Code Ann. § 44-56-10, et. seq. (as amended), and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601, et seq.

DEFINITIONS

1. Unless otherwise expressly provided in this Contract, terms used herein shall have the meaning assigned to them pursuant to the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. §44-56-710 et. seq. (as amended), and if not set forth therein, shall have the meaning assigned to them pursuant to the South Carolina Hazardous Waste Management Act, S.C. Code Ann. § 44-56-10, et. seq. (as amended), the S.C. Pollution Control Act, S.C. Code Ann. .§ 48-1-10, et. seq. (as amended), the S.C. State

Underground Petroleum Environmental Response Bank Act, S. C. Code Ann. § 44-2-10, et. seq. (as amended) or the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601, et. seq.

- A. "RDCG" means RDCG Tall Pines, LLC
- B. "Beneficiaries" means RDCG's Non-Responsible Party lenders, parents, managers, members, employees, subsidiaries, and successors, including new purchasers, lessees, and other parties acquiring an interest in any portion of the Property, but only to the extent that such parties have never been a Responsible Party at the Site.
- C. "Contamination" means the presence of a contaminant, pollutant, hazardous substance, petroleum, or petroleum product.
- D. "Contract" means this Voluntary Cleanup Contract.
- E. "Department" means the South Carolina Department of Health and Environmental Control, or a successor agency of the State of South Carolina that has responsibility for and jurisdiction over the subject matter of this Contract.
- F. "Existing Contamination" shall mean any Contamination present on, or under, the Property as of the execution date of this Contract.
- G. "Property" means the real property as described in the Non Responsible Party Application for Voluntary Cleanup Contract attached as Appendix A, and that is subject to the ownership, prospective ownership, or possessory or contractual interest of RDCG or its Beneficiaries.
- H. "Segregated Sources" means drums, tanks, or similar discrete containers that

potentially hold substances that may cause Contamination upon release to the environment.

- I. "Site" means all areas where a contaminant has been released, deposited, stored, disposed of, or placed or otherwise comes to be located; "site" does not include any consumer product in consumer use or any vessel, as defined in CERCLA section 101 (28).
- J. "Waste Materials" means any Contamination-causing solid, semi-solid, or liquid material discarded, buried, or otherwise present on the Property, and may include sludge, slag, or solid waste materials such as empty containers and demolition debris or materials containing asbestos, lead-based paint, or petroleum or other contaminants.

FINDINGS

- 2. Based on the information known by or provided to the Department, the following findings are asserted for purposes of this Contract:

- A. Owners and Operators: The owners and operators of the Property include the following:

The Cur-San Development Company	1950 to 1962
J. A. Sanders	1962 to 1965
Century Development Company	1965 to 1974
Century Enterprises	1974 to 1974
WWW Associates	1974 to Present

- B. Property and Surrounding Areas: The Property is bounded generally by U.S. Highway 17 to the north, a former drycleaner to the east, mixed use and residential property to the south, and property used for retail to the west. The history of the Property indicates that it has been undeveloped.

The Phase I environmental report dated March 28, 2011 identifies the former drycleaner, Dryclean USA Coastal #305, as a recognized environmental condition. The former drycleaner has a confirmed release currently under remediation through the South Carolina Drycleaner Restoration Fund (SCDRF). Groundwater flow and topography suggest that the groundwater contaminant plume may have migrated onto the Property.

- C. Applicant Identification: RDCG is a Limited Liability Company with its principal place of business located at 400 Hibben Street, Suite 200, Mount Pleasant, SC. RDCG affirms that it has the financial resources to conduct the response action pursuant to this Contract.

- D. Proposed Redevelopment: RDCG will acquire the Property and intends to use the Property for retail or office use, and parking.

BONA FIDE PROSPECTIVE PURCHASER STATUS

3. RDCG certifies that it and its members are Non-Responsible Parties at the Site and are eligible to be a Bona Fide Prospective Purchaser for the Property.

RESPONSE ACTION

4. RDCG agrees to conduct the response actions specified in the sub-paragraphs below. An initial Work Plan shall be submitted by RDCG, or its designee, within thirty (30) days after the date of execution of this Contract by the Department, or such earlier or later date if approved by the Department's project manager. A Report of the

assessment results shall be submitted by RDCG, or its designee in accordance with the schedule provided in the initial Work Plan. RDCG acknowledges that the assessment may find distributions of Existing Contamination requiring additional assessment and/or corrective action on the Property that cannot be anticipated with this Contract. RDCG agrees to perform the additional assessment and/or corrective action consistent with the intended uses of the Property under the purview of this Contract; however, RDCG may seek an amendment of this Contract to clarify its further responsibilities. RDCG shall perform all actions required by this Contract, and any related actions of RDCG's choosing not expressly required by this Contract, pursuant to Work Plans and/or Addenda approved by the Department.

A. Work Plan Logistics:

- 1). The Work Plan(s) shall set forth a schedule and methods for assessment and corrective action activities detailed herein.
- 2). The Work Plan(s) shall be submitted to the Department in the form of one hard copy and one electronic copy of the entire Work Plan on a compact disk (in .pdf format).
- 3). All activities undertaken pursuant to this Contract shall be consistent with S.C. statutes, regulations, and permitting requirements (e.g., stormwater management and waste disposal regulations). RDCG shall identify and obtain the applicable permits before beginning any action.
- 4). The Work Plan(s) shall be in accordance with accepted industry standards and shall be signed and sealed by a Professional Engineer or Professional Geologist duly-licensed in South Carolina.
- 5). The Work Plan(s) shall provide detailed information about the proposed sampling points, collection methods, analytical methods, quality assurance procedures, and other pertinent details of the assessment and/or corrective measures activities consistent with the following:
 - a). Sample collection methodologies shall be consistent with the US EPA

Region IV Field Branches Quality System and Technical Procedures.

- b). All monitoring wells and groundwater sampling points shall be constructed in accordance with 25 S.C. code Ann. Regs. R.61-71, the South Carolina Well Standards. The Work Plan shall provide sufficient detail to support issuance of the well approvals by the Department.
 - c). The laboratory analyses for samples taken pursuant to the Work Plan are specified in the media-specific sub-paragraphs below, but may include any of the following:
 - i. the full EPA Target Analyte List (TAL);
 - i). EPA Target Analyte List excluding cyanide (TAL-Metals);
 - ii. the full EPA Target Compound List (TCL);
 - i). EPA Target Compound List Volatile Organic Compounds (TCL-VOCs);
 - ii). EPA Target Compound List Semi-Volatile Organic Compounds (TCL-SVOCs);
 - iii). EPA Target Compound List Pesticides (TCL-Pesticides);
 - iv). EPA Target Compound List Polychlorinated Biphenyls (TCL-PCBs).
 - d). All analytical methods shall use appropriate detection levels to allow comparison to the media-specific screening criteria listed in the "EPA Regional Screening Levels for Chemical Contaminants at Superfund Sites" in effect at the time of sampling. The applicable Protection of Groundwater SSL for soil samples shall be the "MCL-Based SSL", if listed. If the applicable screening criteria are lower than achievable detections levels, the analytical method shall use the lowest achievable detection levels.
- 6). The Work Plan shall include the names, addresses, and telephone numbers of RDCG's consulting firm(s), analytical laboratories, and RDCG's contact person

for matters relating to this Contract and the Work Plan.

- a). The analytical laboratory shall possess applicable Certification defined in 25A S.C. Code Regs. R.61-81, for the test methods specified in the Work Plan.
 - b). RDCG shall notify the Department in writing of any changes concerning the consulting firm(s), contact person(s), or laboratory identified in the Work Plan.
- 7). The Department will notify RDCG in writing of approvals or deficiencies in the Work Plan.
 - 8). RDCG, or its designee, shall respond in writing within thirty (30) days of receipt of any comments on the Work Plan by the Department.
 - 9). RDCG shall begin implementation of the Work Plan as soon as reasonably possible after receipt of written approval of the Work Plan by the Department.
 - 10). RDCG shall inform the Department at least five (5) working days in advance of all field activities conducted pursuant to the Work Plan, and shall allow the Department, or its authorized representatives, to take duplicates of any samples if desired.
 - 11). RDCG shall preserve items on the Property that may: 1) provide evidence of a Potentially Responsible Party's involvement at the Site; 2) lead to the discovery of other areas of Contamination at the Site; or 3) contain environmental information related to the Site. Such items may include drums, bottles, labels, business and operating records, contracts, Site studies, investigations, and other physical or written materials relating to the Site. RDCG shall notify the Department of the location of any such items, and provide the Department with an opportunity to inspect any materials or copy any documents at the Department's expense prior to destruction of said items.

B. Report Logistics

- 1). Report(s) shall be prepared in accordance with accepted industry standards and

shall be certified by signature and seal of a Professional Engineer or Professional Geologist duly-licensed in South Carolina.

- 2). The Report(s) of assessment and/or corrective measures activities shall include a discussion of investigation methods and any deviations from the Department approved Work Plan. The Report shall also include tables and figures to summarize all data, a surveyed map documenting sampling locations, documentation of field observations including well core logs, sample descriptions, field screening results, and all laboratory analytical data.
- 3). All Report(s) shall be submitted to the Department in the form of one hardcopy and one electronic copy of the entire Report on a compact disk (in .pdf format).

C. Assess Waste Materials and Segregated Sources:

- 1). RDCG shall characterize all Waste Materials and Segregated Sources. Assessment shall include an evaluation of contaminant concentrations and an estimation of the quantity or extent of each type of Waste Material or Segregated Source, as applicable.
- 2). RDCG shall also characterize any other Waste Material and Segregated Sources that may be discovered on the Property at any time during assessment, corrective action, or development activities in accordance with a Department approved plan.
- 3). Upon discovery of any Segregated Source that has not yet released all contents to the environment, RDCG shall expeditiously stabilize or remove the Segregated Source from the Property
- 4). RDCG shall immediately notify the Department if a release of Contamination occurs as a result of its assessment, stabilization or removal actions. RDCG shall assess the impact of the release and take necessary action in accordance with a Department approved plan.

D. Conduct a well survey:

- 1). RDCG shall map all public and private wells used for drinking water supply within a one-half mile radius of the Property, and wells used for irrigation or other non-drinking water use within a one-quarter mile radius.
- 2). RDCG shall report sufficient information to the Department to allow the Department to secure permission to sample the wells. At a minimum, this information shall include the: 1) Location of the well; 2) Identity and mailing address of the well owner; and, 3) Telephone number, if publicly available or otherwise known to RDCG, of the well owner or occupant of the residence served by the well.

E. Assess soil quality across the Property:

- 1). RDCG shall collect and analyze a minimum of 4 soil samples from 2 locations on the Property. RDCG shall collect one surface soil sample (0-1 foot below ground surface) and one subsurface soil sample (2 foot minimum depth) from each of the following locations:
 - a). An area along the property line where the former drycleaner was located.
 - b). An area along the southern portion of the Property.
- 2). Unless otherwise specified above, each surface soil sample shall be analyzed for TAL-Metals and SVOCs. Each subsurface sample shall be analyzed for TAL-Metals, VOCs and SVOCs. A minimum of one subsurface sample from the location along the property line where the former drycleaner was located shall be analyzed for the full EPA-TAL and EPA-TCL.
- 3). Soil quality results shall be compared to the Residential and Industrial Screening Levels and to the applicable Protection of Groundwater SSL.

F. Assess groundwater quality:

- 1). RDCG shall assess groundwater quality across the Property. Assessment shall include samples from a minimum of 1 temporary monitoring well to be installed to bracket the water table and one existing permanent monitoring. Specific

locations shall be as follows:

- a). The existing permanent monitoring well closest to the former dry cleaner;
 - b). A location along the southern portion of the Property.
- 2). The groundwater sample from the temporary well located on the southern portion of the Property shall be analyzed for TAL- Metals, VOCs and SVOCs. The groundwater sample taken from the existing permanent monitoring well closest to the former drycleaner shall be analyzed for the full TAL/TCL parameters.
 - 3). Groundwater quality results shall be compared to the primary maximum contaminant level (MCL) standards in the South Carolina State Primary Drinking Water Regulations, R.61-58, or, if not specified in R.61-58, to the Regional Screening Tables values for "Tapwater."

G. Evaluate and control potential impacts to indoor air:

- 1). RDCG shall evaluate potential impacts to indoor air if the Department determines significant concentrations of volatile organic compounds are present in the subsurface. The Department will use a modified Johnson and Ettinger Model to determine "Significant concentrations" based on representative soil and/or groundwater quality results reflective of the Property. The model will be constrained towards predicting commercial exposures consistent with the building construction proposed to be used on the Property.
- 2). RDCG's evaluation shall, unless otherwise agreed to by the Department, consist of collection and analysis of a representative number of soil gas samples from the proposed footprint of buildings to be constructed on the Property over areas potentially subject to Vapor Intrusion. Soil gas samples shall be analyzed for all site related volatile compounds by appropriate methods capable of detecting soil gas concentrations at screening levels indicative of a 10^{-6} risk for shallow gas samples (using an depth-appropriate attenuation

factor). The applicable screening concentrations shall be based upon the EPA OSWER "Draft Guidance for Evaluating the Vapor Intrusion to Indoor Air Pathway from Groundwater and Soils" or supplemental EPA guidance.

- 3). The Department may allow RDCG to implement vapor intrusion control measures in lieu of the above evaluation, or use alternative evaluation methods that, in the Department's sole discretion, offer a similar degree of data usability.
- 4). RDCG shall submit an addendum to the Work Plan detailing the steps for further study and/or remedial or other control management measures to be implemented if the measured indoor air concentration exceeds a 10⁻⁶ risk calculated for occupational exposure (40 hrs/wk, 50 wk/yr, 25 yrs). The Department shall give reasonable consideration of data or other demonstration that shows unacceptable exposures inside the building do not result from the subsurface conditions.

H. Institute reasonable Contamination control measures:

- 1). RDCG shall stabilize or remove from the Property any Segregated Sources of Contamination that have not yet released all contents to the environment.
 - a). The contents of the Segregated Sources shall be properly reused or disposed of in accordance with regulations.
 - b). RDCG shall document the characterization results and ultimate disposition of the materials to the Department within sixty (60) days of removal of any material from the Property.
- 2). RDCG shall take reasonable measures to limit or prevent human exposure to Existing Contamination on the Property:
 - a). Corrective measures shall be required for Waste Materials and Contamination present in any media on the Property with concentrations in excess of appropriate human-health risk-based exposure standards with plausibly complete routes of exposure.
 - i. RDCG may request Department approval to conduct a site-specific risk

assessment to determine levels of Contamination that are acceptable for the intended use of the Property. The risk assessment shall be conducted in accordance with EPA Risk Assessment Guidance for Superfund. Prior to conducting the risk assessment, RDCG shall submit for Department approval, an overview of risk assessment assumptions including identification of contaminant exposure routes, the type and duration of possible exposures, the magnitude of exposure, and any data gaps that need to be addressed to complete the risk assessment.

- ii. Corrective measures may include removal, encapsulation, barriers, or other methods reasonably expected to limit human exposures to the Contamination. The corrective measures shall be proposed in a Corrective Measures Plan to be approved by the Department prior to implementation, and shall be consistent with the intended future use of the Property.
- iii. Upon completion of any corrective measures, RDCG shall provide a Corrective Measures Report to document satisfactory completion of the corrective measures for Department review and approval prior to obtaining a Certificate of Completion.

I. Monitor and/or abandon the monitoring wells:

- 1). RDCG shall implement a groundwater-monitoring program if required by the Department. Continued monitoring requirements will be based on the Department's determination of potential adverse effects on nearby receptors, i.e., individuals that are presently or potentially exposed to Contamination.
- 2). The Department will determine the frequency and duration of the monitoring program on a case-specific basis.
- 3). RDCG shall abandon the monitoring well(s) when the Department determines there are no further needs for wells. The wells shall be abandoned in

accordance with R.61-71 of the South Carolina Well Standards.

HEALTH AND SAFETY PLAN

5. RDCG shall prepare and submit under separate cover from the Work Plan, a Health and Safety Plan consistent with Occupational Safety and Health Administration regulations. The Health and Safety Plan shall be submitted to the Department in the form of one hard copy and one electronic copy of the Health and Safety Plan on compact disk (in .pdf format). RDCG agrees that the Health and Safety plan is submitted to the Department only for informational purposes. The Department expressly disclaims any liability that may result from implementation of the Health and Safety Plan by RDCG.

PUBLIC PARTICIPATION

6. RDCG and the Department will encourage public participation to implement this Contract as follows:
 - A. The Department will provide notice, seek public comment, and initiate a thirty-day claim contribution notification period in accordance with established procedures consistent with S.C. Code Ann. §44-56-750 upon signature of this Contract by RDCG.
 - B. RDCG shall erect a sign at major entrances onto the Property or other locations routinely accessible by the public. The sign(s) shall be erected no later than one day after the Department's public announcement about the Contract in a newspaper of general circulation in the community.
 - 1). The sign will state "Voluntary Cleanup Project by RDCG Tall Pines, LLC under Voluntary Cleanup Contract 11-6033-NRP with the South Carolina Department of Health and Environmental Control." The sign shall provide a brief description

of the scope of activities under the Contract, and contact information, including telephone number and address, for a representative of RDCG. Contact information for the Department shall state "TOLL-FREE TELEPHONE: 1-866-576-3432".

- 2). All sign lettering must be of sufficient size to be legible with un-aided normal eyesight from the point where the public will normally pass by the Property without intruding onto the Property.
- 3). RDCG shall submit photographs of the sign(s) and a Property drawing showing the location(s) of the signs. The photographs shall be submitted to the Department within 10 days of erecting the sign.
- 4). RDCG agrees to revise the sign if the Department determines the sign is inaccurate, not legible, or otherwise ineffectively placed.
- 5). RDCG shall maintain the sign(s) in legible condition and at visible locations throughout the duration of the Contract period until a Certificate of Completion is issued on the Property.
- 6). The sign(s) may be removed to accommodate building or grading activities; however, RDCG shall restore the sign within two (2) days to its original location, or other publicly accessible location upon notice to the Department.

PROGRESS UPDATES

7. RDCG shall submit periodic written updates to the Department's project manager until such time as all activities related to the Property are complete pursuant to this Contract. The first update shall be due within 90 days of Work Plan approval and semi-annually thereafter.
 - A. The updates may be in summary letter format, but should include information about:
 - 1). The actions taken under this Contract during the previous reporting period;
 - 2). Actions scheduled to be taken in the next reporting period;
 - 3). Sampling, test results, and any other data in summary form, generated during

the previous reporting period regardless of whether the data was collected pursuant to this Contract; and,

- 4). A description of any environmental problems experienced during the previous reporting period and the actions taken to resolve them.

- B. The Department's project manager may allow an extended schedule between updates based on case specific conditions.

SCHEDULE

8. RDCG shall perform all activities and response actions pursuant to this Contract in an expeditious manner. In the event that circumstances cause a delay in implementation of the response actions, the Department may require implementation of interim measures to stabilize Contamination or prevent unacceptable exposures. RDCG shall implement the interim measures in accordance with a Department-approved plan.

DECLARATION OF COVENANTS AND RESTRICTIONS

9. RDCG or its Beneficiaries shall enter, and record, a Declaration of Covenants and Restrictions (Declaration) for the Property if Contamination exceeds levels acceptable for unrestricted use (resident soil screening levels as specified in the EPA Regional Screening Levels for Chemical Contaminants at Superfund Sites) after completing the response actions pursuant to this Contract. The recorded Declaration shall be incorporated into this Contract as an Appendix and shall be implemented as follows:

- A. The Department shall prepare and sign the Declaration prior to providing it to RDCG. An authorized representative of RDCG or its Beneficiaries shall sign the Declaration within ten (10) days of receipt. All signatures shall be witnessed, and signed and sealed by a notary public.

- B. RDCG or its Beneficiaries shall file the executed Declaration with the Registrar of

Deeds or Mesne Conveyance for the county where the Property is located.

- C. RDCG or its Beneficiaries shall provide a copy of the recorded Declaration to the Department within sixty (60) days of the Department's execution. The copy shall show the date and Book and Page number where the Declaration has been recorded.
- D. In the event that Contamination exceeds levels acceptable for unrestricted use (Regional Screening Levels for residential use) on a portion of the Property, RDCG or its Beneficiaries may create a new parcel that will be subject to the Declaration.
- E. The Declaration shall be recorded on the master deed of any planned development for the Property and noted, or referenced hereafter, on each individual deed of property subdivided from the Property and subject to the Declaration.
- F. The Declaration shall reserve a right of entry and inspection for RDCG or its Beneficiaries that may be transferred to another single individual or entity for purposes of compliance monitoring.
 - 1). RDCG or its Beneficiaries shall ensure that the restrictions established by the Declaration remain on any subdivided property.
 - 2). RDCG or its Beneficiaries shall create a procedure to provide a single point of contact responsible for documenting current land use and compliance with the Declaration regardless of the Property's ownership status. The procedure shall be reviewed and approved by the Department before it is implemented.
- G. The Declaration shall provide that the Department has an irrevocable right of access to the Property after RDCG acquires the Property, and such right of access shall remain until remediation is accomplished for unrestricted use and monitoring is no longer required. Such access shall extend to the Department's authorized

representatives and all persons performing response actions on the Property under the Department's oversight.

- H. RDCG or its Beneficiaries, or the individual or entity responsible for compliance monitoring, shall annually document the Property's land use and compliance with the Declaration to the Department. The report shall be submitted by May 31st in a manner and form prescribed by the Department.
- I. The Department may amend the Declaration in response to changes in law, completion of remedial actions meeting the applicable standards in effect at the time, or if other circumstances of the Property change; however, said amendment shall not be applied retroactively unless expressly provided for in the legislation. An amendment may strengthen, relax, or remove restrictions based on the Regional Screening Tables in effect at that time; however, the Department shall not impose a more restrictive condition based solely on changes in the Regional Screening Tables. An amendment to the Declaration shall be duly executed and recorded using procedures similar to those detailed above.

NOTIFICATION

- 10. All notices required to be given by either party to the other shall be in writing. Each party shall have a continuing obligation to identify a contact person, whose name, address, and telephone number must be updated to the other party, throughout the term of the Contract. Notices by electronic mail or facsimile shall be acceptable if acknowledged in writing by the recipient; with the delivery date being the date of acknowledgment or earlier date if stated in the acknowledgment. All other forms of notice shall be deemed sufficiently given if delivered at the address shown below, or at such place or to such agent as the parties may from time to time designate in writing, by: 1) regular U.S. Mail by which notice shall be deemed to occur seven (7) days after the postmark date; 2) Certified or Registered Mail by which notice shall be deemed to

occur on the date received as shown on the receipt; 3) Commercial delivery service company by which notice shall be deemed to occur on the date received as shown on the receipt; or, 4) hand delivery to the other party.

A. All correspondence, notices, work plans, and reports shall be submitted to:

Alex Fulmer, P.E.
Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201

B. All correspondence and notices to RDCG shall be submitted to RDCG's designated contact person who as of the effective date of this Contract shall be:

Tyler Flesch
400 Hibben Street, Suite 200
Mount Pleasant, SC 29464

ACCESS TO THE PROPERTY

11. RDCG agrees the Department has an irrevocable right of access to the Property for environmental response matters after RDCG acquires the Property. This right of access remains until such time as remediation is accomplished for unrestricted use and monitoring is no longer required, and shall extend to the Department's authorized representatives and all other persons performing response actions on the Property under the Department's oversight.

CERTIFICATE OF COMPLETION AND COVENANT NOT TO SUE

12. A Certificate of Completion shall be issued to RDCG or its Beneficiaries for the Property under this Contract as follows:

VCC 11-6033-NRP
RDCG Tall Pines, LLC
File #57929
Page 18 of 27

- A. RDCG or its Beneficiaries shall request a Certificate of Completion pursuant to S.C. Code Ann. § 44-56-750(C)(1) after the response actions are completed and any required Declarations are recorded pursuant to this Contract. The request shall be in writing and shall report 1) the amount of soil that was removed or remediated on the Property; and 2) the cost of all environmental work conducted pursuant to this Contract.
- B. Pursuant to S.C. Code Ann. § 44-56-750(C)(1) the Department shall issue the Certificate of Completion with its covenant not to sue upon determining that RDCG or its Beneficiaries has successfully and completely complied with the Contract and the voluntary cleanup approved under S.C. Code Ann. § 44-56-710 through 760 (as amended).
- C. The Department may issue a Provisional Certificate of Completion if the substantive response actions required under this Contract are complete and a required Declaration has been filed, but all actions under this Contract have not been completed due to Property-specific circumstances.
 - 1). A Provisional Certificate of Completion will include specific performance standards that RDCG or its Beneficiaries shall continue to meet.
 - 2). The Provisional Certificate of Completion may include the Department's covenant not to sue for Existing Contamination; however, said covenant shall be automatically revoked if RDCG or its Beneficiaries do not satisfactorily complete the requirements of the Contract as stipulated in the Provisional Certificate of Completion.

ECONOMIC BENEFITS REPORTING

- 15. RDCG or its Beneficiaries shall report information to the Department that demonstrates that the activities pursuant to this Contract have been beneficial to the

State and community. The report shall be submitted within two (2) years after the execution date of this Contract, and annually thereafter until two (2) years after redevelopment of the Property is complete. RDCG shall summarize the new operations at the Property, the number of jobs created, the amount of property taxes paid, and the total amount invested in the Property for property acquisition and capital improvements.

CONTRACT OBLIGATIONS AND PROTECTIONS INURE

16. The obligations and protections of this Contract apply to and inure to the benefit of the Department, RDCG, and its Beneficiaries. The following stipulations apply to ensure the transition of all obligations and protections to successive Beneficiaries for any portion of the Property:

- A. RDCG or its Beneficiaries shall provide a copy of this Contract and applicable Appendices to any subsequent Beneficiary. Transmittal of the Contract copy may be via any commonly accepted mechanism.
- B. If the Certificate of Completion has not been issued, RDCG or its Beneficiaries shall request approval from the Department prior to transferring the obligations and protections of this Contract to a new person or entity. The Department shall not unreasonably withhold its approval upon receipt of a Non-Responsible Party Application for Voluntary Cleanup Contract documenting that the new person or entity:
 - 1) Is eligible to be a Bona Fide Prospective Purchaser for the Property;
 - 2) Has sufficient resources to complete the activities of this Contract;
 - 3) Will not use the Property for activities that are inconsistent with the terms and conditions of this Contract,
 - 4) Will assume the protections and all obligations of this Contract and,
 - 5) Will, in the Department's sole discretion, provide a measurable benefit to the

State and the community as a result of this transfer.

- C. If the Certificate of Completion has been issued and the portion of the Property is subject to a Declaration or other ongoing obligation pursuant to this Contract, RDCG or its Beneficiaries shall provide written notification to the Department identifying the new individual or entity within thirty days after the effective date of the ownership change or other possessory transfer of the Property.
- 1). The notification shall include a signed statement from the new individual or entity that its use of the Property will remain consistent with the terms of the Contract and the Declaration, and that it will assume the ongoing obligations and protections of this Contract.
 - 2). This requirement is waived for an individual or entity acquiring a portion of the Property for individual commercial use provided the Declaration is recorded on the master deed for the planned development, and the Department has approved the procedure for a single point of contact responsible for documenting current land use and compliance with the Covenant.
- D. If a Certificate of Completion has been issued and the Property is not subject to a Declaration or other continuing obligation pursuant to this Contract, no notification is required.

CONTRACT TERMINATION

17. RDCG, its Beneficiaries, and the Department each reserve the right to unilaterally terminate this Contract by giving thirty days advance written notice to the other party. Termination shall be subject to the following:

- A. The Department may not terminate this Contract without cause and before termination, shall provide RDCG or its Beneficiaries an opportunity to correct the cause(s) for termination, which may include, but is not limited to, the following:

- 1). Failure to complete the terms and conditions of this Contract;
- 2). Change in RDCG's or its Beneficiaries' business activities on the Property or use of the Property that are inconsistent with the terms and conditions of this Contract;
- 3). Failure to submit timely payment for costs upon receipt of the Department's invoice;
- 4). Failure of RDCG or its Beneficiaries to implement appropriate response actions for additional Contamination or releases caused by RDCG or its Beneficiaries;
- 5). Knowingly providing the Department with false or incomplete information or knowing failure to disclose material information;
- 6). Failure by RDCG or its Beneficiaries to obtain the applicable permits from the Department for the response actions or other activities undertaken at the Property pursuant to this Contract; or,
- 7). Failure by RDCG or its Beneficiaries to make material progress toward the expansion, redevelopment, or reuse of the property as determined by the Department upon consideration of RDCG's or its Beneficiaries' marketing efforts, regional economic conditions, and other pertinent information on the Property.

B. Should RDCG or its Beneficiaries elect to terminate, that party shall certify to the Department's satisfaction that any environmental or physical hazards caused or contributed by RDCG or its Beneficiaries have been stabilized or mitigated such that the Property does not pose hazards to human health or the environment.

C. Termination of this Contract by any party does not waive the Department's authority to require response action under any applicable state or federal law.

D. Termination of this Contract by any party does not end the obligations of RDCG or

its Beneficiaries to pay costs incurred by the Department pursuant to this Contract. Payment for such costs shall become immediately due.

- E. Upon termination, the protections provided under this Contract shall be null and void as to any party who participated in actions giving rise to termination of the Contract. Revocation of protections shall also apply to that party's lenders, parents, subsidiaries, members, managers, employees, and successors, including lessees, heirs, devisees, and other parties taking an interest in the Property through that party who participated in actions giving rise to termination of the contract. The protections will continue for any other covered party who did not participate in the action giving rise to the termination.

ENTITLEMENT OF PROTECTIONS AND BENEFITS

18. RDCG and its Beneficiaries are entitled to the protections and benefits in regard to Existing Contamination provided by South Carolina statutes as follows:

- A. Effective on the date this Contract is first executed by the Department:
- 1). Protection from CERCLA contribution claims.
 - 2). Protection from third-party claims as provided by S.C. Code Ann. § 44-56-750(H).
 - 3). Eligibility to file annual application for Voluntary Cleanup Activity Tax Credits pursuant to S.C Code § 12-6-3550.
- B. Effective on the date the Certificate of Completion is issued by the Department.
- 1). The Department's covenant not to sue RDCG and its Beneficiaries for Existing Contamination but not for any Contamination, releases and consequences caused or contributed by RDCG or its Beneficiaries.
 - 2). Specific tax credits or additional benefits expressly contingent in South Carolina statutes on issuance of the Certificate of Completion.

- C. These Protections and Benefits do not apply to any Contamination, releases, and consequences caused or contributed by RDCG or its Beneficiaries. The Department retains all rights under State and Federal laws to compel RDCG and its Beneficiaries to perform or pay for response activity for any Contamination, releases and consequences caused or contributed by RDCG or its Beneficiaries.

RESERVATION OF RIGHTS BY THE DEPARTMENT

19. Nothing in this Contract is intended to be, or shall be construed as, a release or covenant not to sue for any claim or cause of action, past or future, that the Department may have against any person, firm, or corporation other than RDCG and its Beneficiaries. The Department reserves the right to undertake future response actions at the Site and to seek to compel parties, other than RDCG and its Beneficiaries, to perform or pay for response actions at the Site. Nothing in this Contract shall in any way restrict or limit the nature or scope of response actions that may be taken or be required by the Department in exercising its authority under State and Federal law.

RESERVATION OF RIGHTS BY RDCG

20. RDCG retains all rights to assert claims in law or equity against any person, company, or entity with respect to the Property, except as limited elsewhere by this Contract. RDCG and its Beneficiaries specifically deny responsibility for response costs or damages resulting from Existing Contamination except for Contamination, releases, and consequences they cause or contribute to the Property. However, RDCG and its Beneficiaries agree to undertake the requirements of this Contract.

BURDEN OF PROOF

21. RDCG and its Beneficiaries shall have the continuing obligation to demonstrate that any newly discovered Contamination is not caused or contributed by RDCG or its

Beneficiaries. RDCG and its Beneficiaries shall make this demonstration to the Department's satisfaction in accordance with State or Federal Law applicable to such newly discovered Contamination. For purposes of this clause, newly discovered Contamination means finding types of Contamination not previously identified at the Property or substantially higher concentrations of Existing Contamination.

LIMITATION OF CLAIMS BY RDCG AND ITS BENEFICIARIES

22. In consideration of the protections from the Department under this Contract, RDCG and its Beneficiaries agree not to assert any claims or causes of action against the Department or to seek other costs, damages, or attorney's fees from the Department arising out of activities undertaken at the Property pursuant to this Contract. This limitation shall not extend to any claims or causes of action resulting from the Department's intentional or negligent acts or omissions, or the Department's willful breach of this Contract.

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SIGNATORS

23. The signatories below hereby represent that they are authorized to and do enter into this Contract on behalf of their respective parties.

**THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL
CONTROL**

BY:

DATE:

Daphne G. Neel, Chief
Bureau of Land and Waste Management

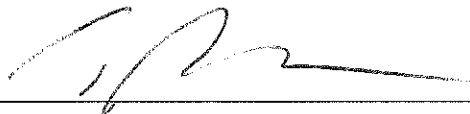
DATE:

Reviewed by Office of General Counsel

RDCG TALL PINES, LLC

BY:

DATE:



8-26-11

Tyler Flesch Member
Printed Name and Title

APPENDIX A

RDCG

Application for Non-Responsible Party Voluntary Cleanup Contract

May 11, 2011